

BEFORE THE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of:	}	
	}	
Preparation of the 2005 Integrated	}	Docket 04-IEP-01D
Energy Policy Report	}	
_____	}	

Attached please find the filed Rebuttal Testimony of Steven K. Kelly on behalf of the Independent Energy Producers Association (IEP) related the preparation of the 2005 Integrated Energy Policy Report (Energy Report). IEP is a trade association representing the interests of independent power plant developers and operators, including the developers of renewable facilities, cogeneration facilities (combined heat and power), and non-renewable merchant facilities.

**California Energy Commission
Data Aggregation NOI
Docket 04-IEP-01D**

**Rebuttal Testimony
of
Steven K. Kelly
Policy Director
Independent Energy Producers Association**

Introduction

The Independent Energy Producers Association (IEP) appreciates the opportunity to provide Rebuttal Testimony in the matter of data aggregation in the Preparation of the 2005 Integrated Energy Policy Report (Energy Report), Docket 04-IEP-01D.

The dispute over data aggregation typically applies to data sets with a time horizon of three years and beyond. Does this matter?

Yes. The utilities argue that disclosure “will allow competitive market participants to know specifically [an IOU’s] net open position, i.e. what PG&E will require in future procurements. Knowing this information, market participants may be able to extract higher prices from us and potentially exercise market power in our competitive procurement processes” (Witness Kuga, p. 1.) First, what is omitted from this declaration is that the data over the next three years (i.e. 2006-2008) is redacted, and the only data that is being considered is data for the time period 2009-2016. Revealing in aggregated form a utility’s estimate of its potential net short in 2016 will have no measurable effect on a utility’s procurement to serve load in that timeframe, because any such estimation is highly speculative and contingent. The same can be said for the period 2009.¹ Second, assuming that the utility actually witnessed evidence of market power being exercised in its procurement, then the utility has the option of terminating the RFO, re-announcing a new RFO in order to enlist greater participation, and re-procuring resources for that time period. Third, the best means for a utility to mitigate the potential for market power is to inform the marketplace as to its resource needs (e.g. when and where resources are needed) far enough in advance so as to mitigate the potential for any single bidder to exercise market power – this is precisely why the California Public Utilities Commission (CPUC) has required Long-Term Procurements and why the

¹ IEP believes that in some cases, such as load forecasts, data for a time horizon within a 24 month period may well warrant redaction, if it is determined that it is truly market sensitive. However, even in this instance, such data should be made available to market participants under an approved protective order. See “Opening Comments of the Independent Energy Producers Association on Procurement-Related Issues,” filed August 4, 2005 in CPUC R. 05-06-040.

CPUC/CEC should make as transparent as possible the future, long-term needs of the utilities.

Why is utility load data important?

IEP agrees with Mr. Kennedy (CEC Witness) that the information provided by the state's utilities is a key part of the record for the 2005 Integrated Policy Report. Given that the findings and recommendations from the 2005 Energy Report will provide the basis for the transmittal to the CPUC for the 2006 long-term procurement, the Commission's treatment of this data is very important.

The Commission's treatment of these data is important for a number of reasons. First, the Commission and the CPUC have continually articulated as a matter of public policy that procurement (and, presumably, the planning that leads to procurement) would be conducted in an open, transparent, and competitive manner.² If these data are not provided to market participants, the Commission will have undermined the first two criteria of openness and transparency. Equally important, if the Commission were to accept the utilities' arguments about the treatment of these data, the Commission would undermine the goal of achieving a competitive procurement environment. This latter effect would occur because certain sectors of the market would have access to these data (e.g. the utilities sponsoring utility-owned projects) while others would be denied access. In the context of the Commission's IEPR, parties would have unequal access to data, and so-called market participants would be afforded "second class" status in that proceeding. This would clearly create an unequal playing field in terms of advocacy at the Commission, just as it would create the potential for an unequal playing field in any actual procurement. Thus, the Commission, if it adopted the utility approach, would be undermining the adopted policy goals of fostering an open, transparent, and competitive environment.

Second, release of this information is important due to the nature of the "hybrid market" articulated initially by the CPUC in its Long-Term Procurement Decision (D. 04-12-048) and reiterated in the California Joint Energy Agencies' Energy Action Plan. Under this market structure, utility-owned projects and non-utility projects are expected to compete in an open, transparent manner. This cannot occur if one class of competitors has superior access to information about where and when future resources are needed. This unequal access to information undermines competition and, ultimately, harms consumers because it diminishes their options.

Are the market power concerns raised by the utilities justified?

No. The utilities are raising market power concerns in the context of long-term procurement that, if properly implemented, is designed to attract as many bidders as

² Energy Action Plan, Adopted 2003, "... state policies can capture the best features of a vigorous, competitive wholesale energy market and renewed, positive regulation." (EAP, p. 1). The Joint Agencies are expected to adopt in August the Energy Action Plan II, which in its draft form states "We also see the need to provide open, transparent, and compelling information and education to all stakeholders and consumers in the State." (EAP II, June 8, 2005 draft, at p. 3, emphasis added.) Furthermore, the document goes on to state, "In particular, we pledge to remove remaining barriers to transparency in the procurement processes in the State and to increase outreach to consumers ..." (EAP II, June 8, 2005 draft, at p. 3.)

possible. If planning and conduct of the Request for Offers (RFO) were conducted with this goal in mind, then the risk of a single bidder "gaming" the procurement would be extremely small and, hence, the utilities' concern is misplaced. However, market power manifests itself in many ways, including in the form of monopsony buying power. To the extent that utility-owned projects are eligible to compete to serve future resource needs, redacting information from so-called market participants but not from so-called non-market participants creates the potential for what might be called "insider arrangements" that could put the investor-owned utility (IOU)-owned projects in a preferred and relatively favorable position vis-à-vis non-utility generators. Here again, this harms consumers if they are denied the opportunity to assess and evaluate alternatives.

Do you agree with the utilities that information disclosure gives suppliers an unfair advantage in pricing?

No. Witness Kuga asserts that "Telling the market exactly how much is needed would give suppliers an unfair advantage in pricing the last increment needed, especially when suppliers are not required to disclose their own cost information nor required to bid their own cost." (Witness Kuga, p. 2.) This assertion ignores the fact that a generator, bidding in an open, transparent, competitive auction, has absolutely zero knowledge of what its competitors will bid and no confidence that its bid will be selected, because nothing requires the utility to accept the bid. It's important to keep in mind that the context here is long-term procurement, i.e. for generation facilities that may become operational a few years hence. Conducting solicitations in advance for deliveries in the future provides the utility with the flexibility to not accept bids and re-conduct the auction if they do not like the bids they receive. Witness Kuga's scenario is more appropriate for short-term procurement (e.g. next day, next hour, next week), but that is not the topic at hand. Indeed, because of concerns that this short-term procurement scenario might actually arise, the CPUC/CEC/CAISO are implementing a resource adequacy program and long-term procurement strategy to minimize, if not eliminate, the probability that the utility will actually be faced with the scenario described.

Witness Kuga inappropriately attempts to associate regulated utilities with non-regulated independent power producers. This is inappropriate for a number of obvious reasons. Regulated utilities have a guaranteed opportunity to recover their reasonable costs from ratepayers (as well as the potential for additional cost recovery for reasonable and prudent, although unexpected, future costs), whereas IPPs are not afforded this treatment. Due to the disparate business structures between regulated utilities and IPPs, this approach to comparability makes no sense. However, if the utility were interested in achieving a greater level of comparability, it might consider in its next RFO offering an 11.5% guaranteed rate of return, over a 30-year time frame, including a separate guaranteed cost recovery of all prudently incurred development, operating, maintenance, and fuel costs, in exchange for bidders releasing cost information.

Do you agree with the utilities regarding the potential for consumer harm based on how the Commission treats these data?

No. For example, witness Kuga suggests that an effect of market participants knowing utility load forecasts 3-10 years in the future will be the possible exercise of market

power, “thus driving up costs to our customers and damaging the competitive functioning of California’s energy markets.” (Witness Kuga, p. 1.) However, as noted above, if evidence of market power were to arise, the utility should decline to procure resources at that time as only a limited number of bidders would be participating. On the other hand, it’s more likely that consumers will benefit from the public disclosure of these data, as the identification of future need would incent more developers to plan and prepare innovative, low-cost projects to compete in forthcoming auctions.

Do the current RFOs provide sufficient information on the types of resources needed and the timing of the need for new resources?

No. PG&E argues that RFOs specify the timeframe in which resources are needed and the specific projects being requested, and this information is sufficient to tell the marketplace what resources are needed and when. (Witness Kuga, p. 2.) This answer fails to address the actual problem. Presently, a typical utility RFO will be released “on the street” with little advance notice. It is at this time, for the first time, that the marketplace receives a clear signal from the utilities as to what they need (i.e. resource type), when they need it (i.e. year operational), and where they need it (i.e. locational requirements). Bidders are asked at that point in time to submit either Statements of Interest or specific bids within 30-90 days, depending on the RFO. Up to this point, potential bidders will have little if any advance information as to what is needed, when, and where. The problem is that developing new generation projects is a time-consuming and expensive endeavor. Few developers will expend the resources blindly in the hopes of guessing the what, when, and where. As a result, the advance preparation and development time to identify and select “good sites” may not occur; the advance acquisition of land, including negotiations with landowners, will not occur; and advance transmission siting work, if needed, may not occur. The effect of this approach is to increase the risk that marginal projects, less innovative projects, will bid into and win the RFO. This increased risk in turn risks higher costs to consumers, negatively affects innovation in project development, and likely places additional stresses on the transmission infrastructure: all of which may increase consumer costs.

Are regional and/or statewide data sufficient for developers to plan new projects?

No. PG&E argues that “What should be important to a developer is the overall anticipated shortfall or surplus in a region which encompasses all LSEs and market participants, and not the market position of a single entity.” (Witness Kuga, p. 3.) IEP disagrees. The CPUC is conducting an on-going proceeding on resource adequacy that seeks to ensure grid reliability and resource sufficiency at a more local level. Given a constrained transmission system in many locations in California today, and the expectation that transmission constraints may shift as demand shifts, it is important for developers to know the expected load growth at a more disaggregated level than the regional or statewide level. Because the primary tool for selecting winners and losers in a utilities’ procurement is the Least-Cost/Best-Fit standard, which is supposed to include transmission impacts, among other important factors, it is critical for future developers to have a better understanding of future locational load growth so they may assess the locational impacts including transmission impacts associated with project development options.

Do you agree with the long term effects of disclosure claimed by the utilities?

No. I agree with CEC Witness Kennedy that “The potential harm that may come from market manipulation evaporates when adequate time is available for additional resources, whether new generation resources, transmission upgrades or additions, or demand side management programs, to be brought on line in response to the need.” [Witness Kennedy, p. 5] As noted above, the utilities have certain stopgap steps they can take if market manipulation manifests itself (e.g. don’t buy). However, consumers will not see the effects (i.e. the opportunity costs) that occur when a lack of transparency and information disclosure as to future, anticipated resource needs constrains the planning by market participants for new infrastructure investment in either generation or transmission.

Does that conclude your testimony?

Yes.

**INDEPENDENT ENERGY PRODUCERS ASSOCIATION
STATEMENT OF QUALIFICATIONS
FOR
STEVEN K KELLY**

My name is Steven K. Kelly. My business address is 1215 K Street, Suite 900, Sacramento, CA 95814.

For the past 10 years, I have served as Policy Director for the Independent Energy Producers Association (IEP). IEP is a trade association comprised of developers and operators of generation facilities, including renewable facilities, cogeneration/combined heat and power facilities, and non-renewable merchant facilities. In my capacity, among other duties, I represent the interests of project developers and operators on legislative and regulatory matters, including procurement matters, implementation of the California renewable portfolio standard, transmission matters, and issues of market design.

I have a Masters of Arts Degree from the University of California in Public Policy, with emphasis in energy and natural resource policy. I have a Bachelors Degree in Political Science from the University of California, Berkeley. In addition, I currently serve on the Interim Governing Committee of the Western Renewable Energy Generation Information System (WREGIS). I also served as Chairman of the Operational Rules Committee for WREGIS during the design phase. I continue to serve as the Executive Director of the Renewable Energy Marketing Board (REMB).

2970/017/X68435.v1